

REMARKS

Claims 1-41 are pending in this application. Favorable reconsideration and allowance are respectfully requested.

In the Claims:

Applicants have amended claims 1, 3, 16, 17, 28, 34 and 38. Claim 23 has been rewritten in independent form. Claims 1 and 38 have been amended to require that the walls provide space between the foundation and the roof structure to allow air to flow therethrough. Claim 3 has been amended to require that the posts and the display panel are secured to the foundation. Claim 16 has been amended to require that the plurality of supports are secured to the foundation. Claim 17 has been amended to clarify the relationship between the freestanding wall structure and the supports. Claim 28 has been amended to require that the upstanding supports partially surround a spatial area in a non-symmetrical configuration. Claim 34 has been amended to require that the freestanding panel partially surrounds the spatial area. Support for the claim amendments may be found throughout the specification and in the originally filed claims. No new matter has been added.

I. Claim Rejections under 35 U.S.C. § 112

Claims 1, 16, 17 and 34 have been rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for inclusion of the terms “generally”, “substantially” and “substantial”.

Applicants respectfully traverse the rejection of claims 1, 16, 17 and 34 under 35 U.S.C. § 112, second paragraph. According to the MPEP, 2173.05(b) Relative Terminology, “The fact that claim language, including terms of degree, may not be precise, does not automatically render the claim indefinite under 35 U.S.C. § 112, second paragraph.” Citation omitted. “Acceptability of the claim language depends on whether one of ordinary skill in the art would understand what is claimed, in light of the specification.” For example, referring to MPEP 2173.05 (b) part D. “Substantially”, a discussion of case law finds that the courts hold that the term “substantially” is definite.

Citing *Andrew Corp. v. Gabriel Electronics*, 847 F.2d 819, 6 USPQ2d 2010 (Fed. Cir. 1988), "The court held that the limitation 'which produces substantially equal E and H plane illumination patterns' was definite because one of ordinary skill in the art would know what was meant by 'substantially equal.'" Similarly, one of ordinary skill in the art would understand what is meant by the claim term "substantially unconnected" when referring to a freestanding wall structure and similar claim terms in claims 1, 16, 17 and 34 using relative terminology.

Claim 17 has been amended to clarify that vibration is not transferred between the freestanding wall structure and the supports.

Therefore, Applicants respectfully request that the Examiner withdraw the rejection of claims 1, 16, 17 and 34 under 35 U.S.C. § 112, second paragraph.

II. Claim Rejections under 35 U.S.C. § 102 (b)

A. Da Costa Reference

Claims 16-19, 25, 26, 28 and 29 have been rejected under 35 U.S.C. § 102 (b) as being anticipated by Da Costa (U.S. D438,635).

Applicants respectfully traverse the Examiner's rejection based on Da Costa. Applicants respectfully request reconsideration of the rejected claims in light of the traversals discussed below.

Da Costa discloses a bus shelter having a roof, a back wall and a side wall. The roof is supported by a single post at the back wall of the structure. As indicated in the Examiner's marked version, the roof (R) is connected to a single support (S). The additional structures that the Examiner has identified as supports (S) are not connected to the roof (R). The roof (R) is not mounted to a plurality of supports that at least partially surround a spatial area.

In contrast, Applicants' claims 16 and 28 require a plurality of supports arranged to at least partially surround a spatial area. Claims 16 and 28 also require that at least one roof structure is mounted to the plurality of supports. Da Costa clearly fails to teach or suggest that the roof is connected to a plurality of upstanding supports. Note that this

structure causes resistance to high winds, e.g. hurricane winds, where as the Da Costa structure clearly would not withstand high winds.

Therefore, the Applicants assert that the claimed invention in claims 16 and 28 is not anticipated by the Da Costa reference. The Applicants respectfully request that the rejection of claims 16 and 28 and dependent claims 17-19, 25, 26 and 29 under 35 U.S.C. §102(b) be withdrawn.

B. Lahaie Reference

Claims 16, 18 and 24 have been rejected under 35 U.S.C. § 102 (b) as being anticipated Lahaie (U.S. D250,836).

Applicants respectfully traverse the Examiner's rejection based on Lahaie. Applicants respectfully request reconsideration of the rejected claims in light of the traversals discussed below.

Lahaie discloses a combined shelter and flower stand. Lahaie shows an enclosed shelter structure with a flower stand attached thereto. According to the Examiner's marked version of FIG. 1, the flower stand includes a freestanding wall structure (FP) that is parallel to the first edge (FE) of the roof (R) of the shelter (S). Further, according to the Examiner, the shelter (S) includes a plurality of horizontal members (HO) extending between at least two supports (SU) and providing support for the walls (W1, W2). Lahaie does not teach or suggest a freestanding wall structure that is secured to the foundation. Instead, the wall structure (FP) is connected to the flower stand as can be seen in FIGS. 5 and 6. Lahaie also does not teach or suggest that the supports are secured to the foundation. It is not clear from the drawings that the Lahaie shelter and plant stand are secured to the ground at all.

In contrast, Applicants' claim 16 requires at least one freestanding wall structure secured to the foundation. Claim 16 also requires that the plurality of supports are connected to the foundation. The flower stand and shelter disclosed by Lahaie clearly does not teach or suggest a freestanding wall structure secured to the foundation nor that the plurality of supports are secured to the foundation.

Therefore, the Applicants assert that the claimed invention in claim 16 is not anticipated by the Lahaie reference. The Applicants respectfully request that the

rejection of claim 16 and dependent claims 18 and 24 under 35 U.S.C. §102(b) be withdrawn.

C. Leuthesser Reference

Claim 28 has been rejected under 35 U.S.C. § 102 (b) as being anticipated as by Leuthesser (U.S. D252,215).

Leuthesser discloses a bus stop shelter having posts, walls, and roof. As shown in FIG. 1, both the rear wall (indicated by W on the Examiner's marked attachment) **and the side wall** (indicated by FP) are connected to the roof (R). At least two posts extend into the space around the side wall (FP) to connect the side wall (FP) to the roof (R). The two posts can be clearly seen in FIGS. 1, 4 and 5, extending from the side wall (FP) to the roof (R). FIG. 2 also clearly shows a post connecting the side wall (FP) to the roof (R). Leuthesser fails to teach or suggest at least one freestanding wall structure wherein the wall has space that is defined between any adjacent structure of the shelter. The connection of the roof to the side wall (FP) of the shelter disrupts the space defined around the side wall and between any adjacent structure of the shelter.

In contrast, Applicants' claimed invention in claim 28 requires a freestanding wall structure positioned adjacent to at least one of the supports and having a space defined around the freestanding wall structure and any adjacent structure of the shelter. As shown in FIG. 1, the freestanding wall structure is substantially free standing, separate from the rest of the shelter. There is a space defined around the wall such that the free standing wall structure does not connect to the roof or to the supports of the shelter. Leuthesser fails to teach or suggest a freestanding wall structure having a space defined around the freestanding wall structure and between any adjacent structure of the shelter. As noted above, the wall in Leuthesser is indeed attached to the other structures. This configuration makes the Leuthesser structure unable to withstand high wind forces.

Therefore, the Applicants assert that the claimed invention of claim 28 is not anticipated by the Leuthesser reference. The Applicants respectfully request that the rejection of claim 28 under 35 U.S.C. §102(b) be withdrawn.

III. Claim Rejections under 35 U.S.C. § 103 (a)

Claims 1 and 2 have been rejected under 35 U.S.C. § 103 (a) as being unpatentable over Lahaie in view of Robbins (U.S. 5,107,637). According to the Examiner, Lahaie discloses the basic claimed shelter except for specifically detailing that the freestanding wall defines advertisement and except for detailing that the roof includes a solar power means. The Examiner cites Robbins for the shelter with a panel that display advertising material therein. According to the Examiner, it is known in the art to provide a shelter with a solar-powered roof.

Applicants respectfully traverse the rejection of claims 1 and 2 based on Lahaie in view of Robbins since the references alone or in combination fail to teach or suggest Applicants' claimed invention. Even if the teachings of Lahaie and Robbins could be combined, all of the recited elements in Applicants' rejected claims would not be found in the combination.

Robbins discloses a shelter structure including a photovoltaic illumination system. The shelter includes a back wall 20 and a side wall 22 which, together with the wall module 16, support the roof 12. (Col. 3, lines 1-3). As shown in FIG. 1, the roof 12 is connected to and supported by the wall module 16 across the entire width of the wall module 16. The back wall 20, side wall 22 and wall module 16 are supported by a plurality of posts that surround the shelter and are also connected to the roof 12. The walls extend from the roof to the ground with no air flow therethrough. Robbins fails to teach or suggest a freestanding wall structure and walls providing space between the foundation and the roof structure to allow air to flow therethrough.

As discussed above, Lahaie discloses a combined shelter and flower stand. Lahaie discloses a shelter having walls extending between the roof and the horizontal cross members at the base of the shelter. As acknowledged by the Examiner, Lahaie fails to teach or suggest an advertising space or solar a solar-powered means for illuminating an advertising space. Lahaie also fails to teach or suggest walls providing space between said foundation and said roof structure to allow air to flow therethrough. Again, this feature is important because of the wind-resistance provided by having a space for air to flow between the roof structure and the foundation.

Therefore, Applicants assert that the claimed invention is not obvious over any combinations of Lahaie and Robbins. Applicants respectfully request that the rejection of claims 1 and 2 under 35 USC §103(a) be withdrawn.

Claims 3-7, 10-15 and 34-41 have been rejected under 35 U.S.C. § 103 (a) as being unpatentable over Lahaie in view of Robbins. With reference to claims 3, 34 and 38, the Examiner states that Lahaie discloses the basic shelter except for explicitly disclosing whether the panel displays advertising material. The Examiner states that Robbins teaches a panel of a shelter displaying advertising material and that it would have been obvious to one of skill in the art to provide the shelter of Lahaie with advertising as taught by Robbins.

Applicants respectfully traverse the Examiner's rejections based on Lahaie in view of Robbins since the references alone or in combination fail to teach or suggest Applicants' claimed invention. Even if the teachings of Lahaie and Robbins could be combined, all of the recited elements in Applicants' rejected claims would not be found in the combination. Lahaie and Robbins fail to show a freestanding wall structure partially surrounding the spatial area and substantially disconnected from the remaining structure.

Robbins, as discussed above, fails to teach or suggest a freestanding wall structure or panel display unattached to the posts wall and roof of the shelter. Robbins also fails to teach or suggest a shelter wherein the wall structure provide space between the foundation and the roof structure for air flow therethrough.

Lahaie, as discussed above, fails to teach or suggest a freestanding wall having advertising materials or a panel display connected to the foundation. Lahaie discloses a plant stand that is spaced apart from the enclosed shelter, the plant stand having two walls connected to the plant stand. In addition, Lahaie fails to teach or suggest a shelter wherein the wall structure provides space between the foundation and the roof structure for air flow therethrough. The walls disclosed by Lahaie enclose the shelter.

Lahaie and Robbins together or individually fail to teach or suggest a panel display connected to and upstanding from the fixed foundation and unattached to the posts, the wall and the roof. Lahaie and Robbins together or individually fail to teach or

suggest a freestanding panel that partially surrounds the spatial area and that is substantially unattached to the supports or the roof structure. Further, Lahaie and Robbins together or individually fail to teach or suggest wall structures that provide space between the foundation and the roof structure for air flow therethrough.

In contrast, Applicants' claimed invention in newly amended claim 3 requires a panel display connected to and upstanding from the fixed foundation and unattached to the posts, the wall and the roof. Newly amended claim 34 requires a freestanding panel that partially surrounds the spatial area and that is substantially unattached to the supports or the roof structure. Claim 38 requires wall structures that provide space between the foundation and the roof structure for air flow therethrough.

Therefore, Applicants assert that the claimed invention is not obvious over any combinations of Lahaie and Robbins. Applicants respectfully request that the rejection of claims 3-7, 10-15 and 34-41 under 35 USC §103(a) be withdrawn.

Claims 8 and 9 have been rejected under 35 USC §103(a) as being unpatentable over Lahaie in view of Robbins as applied to claim 3 above and further in view of Da Costa. The Examiner states that Da Costa teaches channel members and at least one glass panel.

Applicants respectfully traverse the Examiner's rejections based on Lahaie in view of Robbins further in view of Da Costa since the references alone or in combination fail to teach or suggest Applicants' claimed invention. Even if, *arguendo*, the teachings of Lahaie, Robbins and Da Costa could be combined, all of the recited elements in Applicants' rejected claims would not be found in the combination.

Da Costa has been discussed above. Similar to Lahaie, where the Examiner states that the Lahaie design application is silent as to the channel members, the design application of Da Costa is also silent as to channel members and the materials used to form the shelter and does not make up the deficiencies of Lahaie and Robbins.

Therefore, Applicants assert that the claimed invention is not obvious over any combinations of Lahaie, Robbins and Da Costa. Applicants respectfully request that the rejection of claims 8 and 9 under 35 USC §103(a) be withdrawn.

Claims 20-22 and 27 have been rejected under 35 USC §103(a) as being unpatentable over Lahaie in view of Robbins.

Applicants respectfully traverse the rejection of claims 20-22 and 27. Claims 20-22 and 27 depend from newly amended claim 16 that has been discussed above with respect to Lahaie. Applicants assert that Lahaie fails to teach or suggest at least one freestanding wall structure secured to the foundation and substantially unconnected to the roof as required by claim 16. Further, also discussed above, Robbins fails to teach or suggest any freestanding wall structure secured to the foundation and substantially unconnected to the roof as required by claim 16 and cannot make up the deficiencies of Lahaie.

Therefore, Applicants assert that the claimed invention is not obvious over any combinations of Lahaie and Robbins. Applicants respectfully request that the rejection of claims 20-22 and 27 under 35 USC §103(a) be withdrawn.

Claims 30-33 have been rejected under 35 USC §103(a) as being unpatentable over Leuthesser or Da Costa in view of Robbins. According to the Examiner, Leuthesser and Da Costa disclose the basic claimed shelter except for explicitly detailing that the roof panels are solar-powered linked to circuitry and power storage components; and except for the freestanding wall having advertising thereon and an interior space with at least one light source. The Examiner suggests that Robbins teaches the panel with advertising materials and solar-powered light sources.

Applicants respectfully traverse the rejection of claims 30-33 over Leuthesser or Da Costa in view of Robbins. Claims 30-33 depend from claim 28 that provides a method of providing a wind resistant shelter. Claim 28 has been discussed above with reference to Leuthesser and Da Costa.

Leuthesser fails to teach or suggest at least one freestanding wall structure wherein the wall has space that is defined between any adjacent structure of the shelter. The connection of the roof to the side wall of the shelter disrupts the space defined around the side wall and between any adjacent structure of the shelter. The connection between the side wall, the roof and the back wall makes the structure susceptible to wind damage. Also as discussed above, Robbins fails to teach or

suggest a freestanding wall structure wherein the wall structure has space that is defined between any adjacent structure of the shelter and further fails to teach or suggest a space between the foundation and the roof structure for air flow therethrough. As previously discussed, Robbins provides side walls and a back wall connected to the roof and extending from the ground to the roof that make the shelter susceptible to wind damage. Leuthesser and Robbins together or individually fail to teach or suggest a method of providing a wind resistant shelter having a freestanding wall structure including a space that is defined around the freestanding wall structure and uninterrupted by any adjacent structure of the shelter.

In contrast, Applicants claim 28 requires a freestanding wall structure positioned adjacent to at least one of the supports and having a space defined around the freestanding wall structure and any adjacent structure of the shelter.

Da Costa has also been discussed above with respect to claim 28. Da Costa teaches a shelter having a single post supporting the entire roof structure. Da Costa clearly fails to teach or suggest that the roof is connected to a plurality of upstanding supports. The lack of a plurality of upstanding supports makes the Da Costa shelter susceptible to damaging winds. As discussed above, Robbins also fails to teach or suggest a wind resistant structure. In addition, Da Costa and Robbins fail to teach or suggest a plurality of upstanding supports at least partially surrounding a spatial area in a non-symmetrical configuration.

IV. Allowable Subject Matter


Applicants kindly thank the Examiner for indicating that claim 23 would be allowable. Applicants have rewritten claim 23 in independent form including all the limitations of the base claim and any intervening claim.

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SUMMARY

Pending Claims 1-41 as amended are patentable. Applicants respectfully request reconsideration. The Examiner is invited to contact the undersigned attorney for the Applicants via telephone if such communication would expedite this application.

Respectfully submitted,



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